

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6359 of 1997

with

SPECIAL CIVIL APPLICATION No 6812 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? No.
  2. To be referred to the Reporter or not? No.
  3. Whether Their Lordships wish to see the fair copy  
of the judgement? No.
  4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No.
  5. Whether it is to be circulated to the Civil Judge?  
No.

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VF PATEL

Versus

DIVISIONAL CONTROLLER

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Appearance:

1. Special Civil Application No. 6359 of 1997  
MR JS BRAHMBHATT for Petitioner.  
MR HS MUNSHA for the respondent.
  2. Special Civil ApplicationNo 6812 of 1997  
MR HS MUNSHAW for Petitioner.  
MR J.S.BRAHMBHATT for the respondent.
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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 05/02/98

ORAL JUDGEMENT

Rule. Mr. M.S.Munsha, learned Advocate for the respondent in SCA No. 6359/97 waives service of the Rule on behalf of the respondent and Mr. J.S.Brahmbhatt, learned Advocate for the respondent in SCA6812/97 waives service of the Rule on behalf of the respondent. At the request of the learned Advocates, these petitions are taken up for final hearing to-day.

These two petitions have been filed by the employee as well as employer challenging the award passed by the Labour Court in Reference (LCV) No.46/93. The workman has challenged that part of the award by which he has been refused 70% of the back wages while the employer-Corporation has challenged the award of the Labour Court directing it to reinstate the workman on his original post with continuity of service with 30% of backwages.

The workman was serving with the employer-Corporation at the relevant time as a driver. It is the case of the workman that he was on the route of Jambusar-Ahmedabad and while he was at Baroda he suddenly became ill and started vomitting. He was taken to the hospital and, therefore, the bus was driven by the Reliever from Baroda to Sankheda. The said bus, however, met with an accident with the result a person lost his life. The workman was issued chargesheet on the ground that the act of handing over the bus to another driver amounted to misconduct and that he had illegally handed over the charge of the bus to a Badli workman and, therefore, had remained negligent in discharge of his duties.

In the Labour Court no evidence was led and whatever evidence led before the Inquiry Officer was placed on record. The Labour Court has recorded the finding that the workman has not led evidence of the driver to whom he had handed over the charge of the bus from Baroda to Sankheda and has not produced the medical certificate of Dr. Shailesh Shah from whom he is stated to have taken treatment. In view of this finding, he has accepted the finding recorded by the Inquiry Officer. However, it appears that while exercising powers under Section 11-A of the ID Act, the Labour Court has set aside the order of dismissal and directed reinstatement of the workman with 30% backwages.

Having gone through the findings recorded by the Inquiry Officer, it is abundantly clear that the workman

has in fact produced the certificate of taking treatment from Dr. Shailesh Shah and also examined in the inquiry the Badli Driver, who was, in fact, a Reliever . Therefore, the findings recorded by the Labour Court are on the face of it contrary to the record and, therefore, the same are required to be set aside. Apart from that, on behalf of the Corporation it was submitted before the Labour Court that it has no objection if the workman is reinstated. In view of this, the petition filed by the Corporation deserves to be rejected .So far as the petition filed by the workman is concerned, considering the fact that the workman himself is responsible for raising the dispute after lapse of five years, the Corporation cannot be saddled with the liability of paying backwages for the intervening period. In view of this payment of backwages at the rate of 30% awarded by the Labour Court is just and proper and, therefore, no interference is called for. Consequently , therefore, the petition filed by the workman is also required to be rejected.

In the result, both the petition are rejected.  
Rule in both the petitions is discharged.

The respondent Corporation shall reinstate the workman according to the order passed by the Labour Court within three weeks and pay him 30% back wages for the intervening period within four weeks from to-day.

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